

**IN THE UNITED STATES DISTRICT COURT FOR  
THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

SUZANNE E. MALEC MCKENNA, as  
Executor and Personal Representative  
of the Estate of MICHAEL R. MALEC  
MCKENNA, deceased,

Plaintiff,

-vs-

ALLIEDBARTON SECURITY SERVICES, LLC  
a/k/a ALLIED BARTON SECURITY SERVICES,  
UST-GEPT, a Joint Venture,  
GE ASSET MANAGEMENT, INC.,  
NACA LTD PARTNERSHIP,  
NACA MADISON, LLC,  
NACA REALTY CORPORATION,  
NACA Limited partnership, an affiliate of General  
Electric Pension Trust,  
UST XV Madison Ltd., and affiliate of Estein &  
Associates,  
MB REAL ESTATE SERVICES, LLC,

Defendants.

07 CV 82

Judge St. Eve

Magistrate Judge Keys

**DEFENDANTS' RULE 12(B)(6) MOTION TO DISMISS**

NOW COME Defendants, UST-GEPT; GE ASSET MANAGEMENT, INC.;  
NACA LTD. PARTNERSHIP; NACA MADISON, LLC.; NACA REALTY  
CORPORATION; NACA LIMITED PARTNERSHIP; UST XV MADISON, LTD., and  
MB REAL ESTATE SERVICES, LLC., by and through one of their attorneys, Robert M.  
Burke of JOHNSON AND BELL, LTD., and move this Honorable Court to dismiss  
Counts three through twelve of Plaintiff's Complaint, pursuant to Federal Rule of Civil  
Procedure 12(b)(6), for failure to state a legally cognizable claim under Illinois  
substantive law:

1. Plaintiff filed this case in the Circuit Court of Cook County, and it was later properly removed to the District Court for the Northern District of Illinois. The subject matter jurisdiction of the District Court is premised on diversity jurisdiction under 28 U.S.C. §1332, therefore the substantive law of the forum state, here Illinois, is to be applied by the District Court.

2. This case arises from an incident that took place in the office building located at 500 W. Madison in Chicago, Illinois, during which the plaintiff's decedent was shot and killed by an individual later identified as Joseph Jackson. Plaintiff alleges each of the Movants possessed an ownership interest in the property, and therefore, owed a duty to protect the plaintiff's decedent from the criminal acts of Joseph Jackson.

3. Under Illinois law, the Movants owed no legally cognizable duty to protect plaintiff's decedent from the criminal acts of the third party alleged here; therefore, Plaintiff's Complaint against Movants should be dismissed as a matter of law.

4. Moreover, Plaintiff's allegation of negligence based on the Movants failure to notify the police of Joseph Jackson's presence on the premises, prior to his commission of a crime, fails to state a cause of action under Illinois law.

5. Movants have submitted a Memorandum in Support of Their Motion to Dismiss, which more fully explains their position in this matter.

WHEREFORE, for all of the foregoing reasons, Defendants, UST-GEPT; GE ASSET MANAGEMENT, INC.; NACA LTD. PARTNERSHIP; NACA MADISON, LLC.; NACA REALTY CORPORATION; NACA LIMITED PARTNERSHIP; UST XV MADISON, LTD., and MB REAL ESTATE SERVICES, LLC., pray that this Honorable Court dismiss Counts three through twelve of Plaintiff's Complaint against them with

prejudice and further pray that this Court find that there exists no just reason to delay enforcement or appeal of this Order in accordance with FRCP 54(b).

Respectfully submitted,

JOHNSON & BELL, LTD.

/s/Robert M. Burke,

One of the Attorneys for Defendants,  
UST-GEPT JOINT VENTURE, L.P.,  
GE ASSET MANAGEMENT, INC.,  
NACA, LTD. PARTNERSHIP, NACA  
MADISON, LLC, NACA REALTY  
CORPORATION, UST XV MADISON,  
LTD., and MB REAL ESTATE  
SERVICES, L.L.C., and do hereby  
MB Real Estate Services, L.L.C.

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